

ASSEMBLY BILL

No. 2807

Introduced by Assembly Member Mayes

February 19, 2016

An act to amend Section 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2807, as introduced, Mayes. Income taxes: minimum franchise tax: annual tax.

Existing law imposes an annual minimum franchise tax, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state. Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability company, and limited liability partnership doing business in this state, or that makes certain filings or registrations with the Secretary of State. Existing law, until taxable years beginning on or after January 1, 2018, exempts a corporation and a limited liability company that are small businesses solely owned by a deployed member of the United States Armed Forces, as specified, from paying the minimum franchise tax, or the annual tax, for the privilege of doing business in this state if the corporation or limited liability company ceases operation or operates at a loss, as defined.

The bill would reduce the annual minimum franchise tax to \$700 for taxable years beginning on or after January 1, 2017, and thereby also reduce the annual tax for the entities listed above. This bill would also extend the exemption for corporations and limited liability companies

solely owned by deployed members of the United States Armed Forces until January 1, 2020.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23153 of the Revenue and Taxation Code
2 is amended to read:
3 23153. (a) Every corporation described in subdivision (b) shall
4 be subject to the minimum franchise tax specified in subdivision
5 (d) from the earlier of the date of incorporation, qualification, or
6 commencing to do business within this state, until the effective
7 date of dissolution or withdrawal as provided in Section 23331 or,
8 if later, the date the corporation ceases to do business within the
9 limits of this state.
10 (b) Unless expressly exempted by this part or the California
11 Constitution, subdivision (a) shall apply to each of the following:
12 (1) Every corporation that is incorporated under the laws of this
13 state.
14 (2) Every corporation that is qualified to transact intrastate
15 business in this state pursuant to Chapter 21 (commencing with
16 Section 2100) of Division 1 of Title 1 of the Corporations Code.
17 (3) Every corporation that is doing business in this state.
18 (c) The following entities are not subject to the minimum
19 franchise tax specified in this section:
20 (1) Credit unions.
21 (2) Nonprofit cooperative associations organized pursuant to
22 Chapter 1 (commencing with Section 54001) of Division 20 of the
23 Food and Agricultural Code that have been issued the certificate
24 of the board of supervisors prepared pursuant to Section 54042 of
25 the Food and Agricultural Code. The association shall be exempt
26 from the minimum franchise tax for five consecutive taxable years,
27 commencing with the first taxable year for which the certificate
28 is issued pursuant to subdivision (b) of Section 54042 of the Food
29 and Agricultural Code. This paragraph only applies to nonprofit
30 cooperative associations organized on or after January 1, 1994.
31 (d) (1) Except as provided in paragraph (2), paragraph (1) of
32 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)

1 of Section 23181, and paragraph (1) of subdivision (c) of Section
2 23183, corporations subject to the minimum franchise tax shall
3 pay annually to the state a minimum franchise tax of ~~eight hundred~~
4 ~~dollars (\$800)~~. of:

5 (A) *Eight hundred dollars (\$800) for taxable years beginning*
6 *before January 1, 2017.*

7 (B) *Seven hundred dollars (\$700) for taxable years beginning*
8 *on or after January 1, 2017.*

9 (2) The minimum franchise tax shall be twenty-five dollars
10 (\$25) for each of the following:

11 (A) A corporation formed under the laws of this state whose
12 principal business when formed was gold mining, which is inactive
13 and has not done business within the limits of the state since 1950.

14 (B) A corporation formed under the laws of this state whose
15 principal business when formed was quicksilver mining, which is
16 inactive and has not done business within the limits of the state
17 since 1971, or has been inactive for a period of 24 consecutive
18 months or more.

19 (3) For purposes of paragraph (2), a corporation shall not be
20 considered to have done business if it engages in business other
21 than mining.

22 (e) Notwithstanding subdivision (a), for taxable years beginning
23 on or after January 1, 1999, and before January 1, 2000, every
24 “qualified new corporation” shall pay annually to the state a
25 minimum franchise tax of five hundred dollars (\$500) for the
26 second taxable year. This subdivision shall apply to any corporation
27 that is a qualified new corporation and is incorporated on or after
28 January 1, 1999, and before January 1, 2000.

29 (1) The determination of the gross receipts of a corporation, for
30 purposes of this subdivision, shall be made by including the gross
31 receipts of each member of the commonly controlled group, as
32 defined in Section 25105, of which the corporation is a member.

33 (2) “Gross receipts, less returns and allowances reportable to
34 this state,” means the sum of the gross receipts from the production
35 of business income, as defined in subdivision (a) of Section 25120,
36 and the gross receipts from the production of nonbusiness income,
37 as defined in subdivision (d) of Section 25120.

38 (3) “Qualified new corporation” means a corporation that is
39 incorporated under the laws of this state or has qualified to transact
40 intrastate business in this state, that begins business operations at

1 or after the time of its incorporation and that reasonably estimates
2 that it will have gross receipts, less returns and allowances,
3 reportable to this state for the taxable year of one million dollars
4 (\$1,000,000) or less. “Qualified new corporation” does not include
5 any corporation that began business operations as a sole
6 proprietorship, a partnership, or any other form of business entity
7 prior to its incorporation. This subdivision shall not apply to any
8 corporation that reorganizes solely for the purpose of reducing its
9 minimum franchise tax.

10 (4) This subdivision shall not apply to limited partnerships, as
11 defined in Section 17935, limited liability companies, as defined
12 in Section 17941, limited liability partnerships, as described in
13 Section 17948, charitable organizations, as described in Section
14 23703, regulated investment companies, as defined in Section 851
15 of the Internal Revenue Code, *relating to definition of regulated*
16 *investment company*, real estate investment trusts, as defined in
17 Section 856 of the Internal Revenue Code, *relating to definition*
18 *of real estate investment trust*, real estate mortgage investment
19 conduits, as defined in Section 860D of the Internal Revenue Code,
20 *relating to REMIC defined*, qualified Subchapter S subsidiaries,
21 as defined in Section 1361(b)(3) of the Internal Revenue Code,
22 *relating to treatment of wholly owned subsidiaries*, or to the
23 formation of any subsidiary corporation, to the extent applicable.

24 (5) For any taxable year beginning on or after January 1, 1999,
25 and before January 1, 2000, if a corporation has qualified to pay
26 five hundred dollars (\$500) for the second taxable year under this
27 subdivision, but in its second taxable year, the corporation’s gross
28 receipts, as determined under paragraphs (1) and (2), exceed one
29 million dollars (\$1,000,000), an additional tax in the amount equal
30 to three hundred dollars (\$300) for the second taxable year shall
31 be due and payable by the corporation on the due date of its return,
32 without regard to extension, for that year.

33 (f) (1) Notwithstanding subdivision (a), every corporation that
34 incorporates or qualifies to do business in this state on or after
35 January 1, 2000, shall not be subject to the minimum franchise tax
36 for its first taxable year.

37 (2) This subdivision shall not apply to limited partnerships, as
38 defined in Section 17935, limited liability companies, as defined
39 in Section 17941, limited liability partnerships, as described in
40 Section 17948, charitable organizations, as described in Section

23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, *relating to definition of regulated investment company*, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, *relating to definition of real estate investment trust*, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, *relating to REMIC defined*, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, *relating to treatment of wholly owned subsidiaries*, to the extent applicable.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

(g) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (b) of Section 1905 of the Corporations Code, prior to its amendment by the act amending this subdivision, and that does not thereafter do business shall not be subject to the minimum franchise tax for taxable years beginning on or after the date of that filing.

(h) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

(i) (1) Notwithstanding subdivision (a), a corporation that is a small business solely owned by a deployed member of the United States Armed Forces shall not be subject to the minimum franchise tax for any taxable year the owner is deployed and the corporation operates at a loss or ceases operation.

(2) The Franchise Tax Board may promulgate regulations as necessary or appropriate to carry out the purposes of this subdivision, including a definition for “ceases operation.”

(3) For the purposes of this subdivision, all of the following definitions apply:

(A) “Deployed” means being called to active duty or active service during a period when a Presidential Executive order specifies that the United States is engaged in combat or homeland defense. “Deployed” does not include either of the following:

- (i) Temporary duty for the sole purpose of training or processing.
- (ii) A permanent change of station.

1 (B) “Operates at a loss” means negative net income as defined
2 in Section 24341.

3 (C) “Small business” means a corporation with total income
4 from all sources derived from, or attributable, to the state of two
5 hundred fifty thousand dollars (\$250,000) or less.

6 (4) This subdivision shall become inoperative for taxable years
7 beginning on or after January 1, ~~2018~~. 2020.

8 SEC. 2. This act provides for a tax levy within the meaning of
9 Article IV of the Constitution and shall go into immediate effect.